IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

Case No. 77-1044

CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia limited partnership, and
CLIFFORD J. HYNNING,
Managing General Partner of said limited partnership,
*Petitioners,*

v.

BOGLEY HARTING MAHONEY &
LEBLING, INC., a Maryland corporation,

## REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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## REPLY

Petitioners have argued that the Virginia courts erred in failing to recognize any Federal question under the United States Constitution in the exercise of state court jurisdiction over a non-resident limited partnership, without any minimal contracts with Virginia, merely by service of process on a partner who happens to reside in that state without conducting any partnership business there. In its opposition,

respondent contends (at p. 3) that "the Petitioners never presented to the Circuit Court of Arlington County, Virginia or the Supreme Court of Virginia, any Federal question of substance" and further (at p. 11) that "there was no Federal question presented here since the appearance by Caravel Office Building Company precluded it from raising constitutional questions concerning the judgment."

These contentions by respondent are readily refuted on the record in the courts below: Thus at the very threshhold of the Virginia litigation, the petitioners appeared:

(a) to move "to quash service on Caravel Office Building Company, a District of Columbia partnership," printed at pp. 19a-20a, together with a supporting affidavit that Caravel had engaged in no business or activities in Virginia (printed at pp. 21a-22a).

(b) to file a plea in abatement that the limited partnership "performs no other functions or activities" than the ownership, management, and leasing of a District of Columbia office building, printed at pp. 23a-26a, and

(c) to file an answer "made by virtue of a special appearance," printed by respondent in its opposition at pp. 2b-4b.

The motion and plea were summarily overruled by the Arlington Circuit Court (printed at pp. 15a-16a) without any inquiry into the minimum contacts between the non-resident partnership of Caravel Office Building Company and Virginia. The Arlington Circuit Court later ruled that "in matters of remedies and procedure in this cause the law of the Commonwealth of Virginia should govern," printed at pp. 8a-9a. Petitioners took formal objections and exceptions, as were noted on the face of the above



Orders. The argument on jurisdiction was further pressed on appeal to the Supreme Court of Virginia that Virginia lacks state court jurisdiction over a non-resident partnership whose "*sole* [italics in the original] contact with Virginia was the residence of one of Caravel's general partners," printed herein at p. 28a as an excerpt of p. 21 from the petition for appeal in the Supreme Court of Virginia. All these motions, pleas and arguments were expressed in terms of the minimal contact test of *International Shoe, Hanson* and *Shaffer*. Also attached hereto at pp. 29a, *et seq.* is the complaint, which makes clear in paragraphs 3, 5, 6, and 7, that petitioner Hynning was sued only in his representative capacity as general partner of a non-resident partnership.

From the above it is clear that the issue of state court jurisdiction over a non-resident partnership under the United States Constitution was both raised in the trial court and pursued in the Supreme Court of Virginia, and is therefore properly before this Court.

Federal decisional law on partnerships arises almost exclusively out of litigation which must satisfy the requirements of complete diversity of citizenship of the parties for purposes of Federal District Court jurisdiction. It is suggested that such precedents have no application here, as specifically recognized in Rule 17(b)(1) of the Federal Rules of Civil Procedure where "a partnership or other unincorporated association, which has no such capacity by the law of such state [forum], may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States. . . ." Cf. *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922), an unincorporated association similar to a partnership under

the diversity cases. The test for state court jurisdiction over a non-resident partnership is the "minimal contact" test of *International Shoe* and *Shaffer*.

By way of assistance to the reader, petitioners set forth what they term an "errata" sheet for respondent's opposition:

1. The citation of *Milliken v. Meyer*, 312 U.S. 712, p. 7 of respondent's opposition refers to a denial of rehearing, whereas the case on its merits is reported at 311 U.S. 457.

2. *Adam v. Saenger*, 30 U.S. 62, cited by respondent on p. 11 of its opposition, cannot be found in Volume 30, but is reported at 303 U.S. 62.

3. The citation of *Oliver v. United Mortgage Company, Inc.*, 230 A.2d 722 (1967) by respondent on p. 15 of its opposition as case authority that "the trial court was correct in relying upon" is mystifying, since *Oliver* can nowhere be found in the opinion of the trial court, printed at pp. 10a-14a, and so "correctly set out in Petitioners' Appendix A," according to respondent, p. 2.

4. Essential punctuation, namely, a period following the fourth word of the third line from the bottom of p. 9 of respondent's opposition is missing, for assuredly respondent cannot contend that petitioner Hynning conceded jurisdiction over the partnership, but only "conceded" in his answer that he was a general partner of the non-resident partnership.

For the rest we rely on the petition that a writ of certiorari issue to the Supreme Court of Virginia.

Respectfully submitted,



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## APPENDIX

### EXCERPT FROM PETITION FOR APPEAL TO THE SUPREME COURT OF VIRGINIA, p. 21

III. THE CIRCUIT COURT OF ARLINGTON COUNTY SHOULD NOT HAVE TAKEN COGNIZANCE OF THIS CASE SINCE IT WAS A PURELY LOCAL ACTION RELATING ONLY TO THE DISTRICT OF COLUMBIA.

As has been previously stated, this was an action on a promissory note evidencing a loan made to a District of Columbia partnership for the purpose of constructing a large commercial office building in the District of Columbia and was secured by real property located in the commercial zone of Washington. The note was delivered in the District of Columbia and Caravel's exclusive business was the ownership and management of the Caravel Office Building in the District of Columbia, Further, the note specifically stated that it was to be governed by the laws of the District of Columbia in accordance with the choice of law provisions of the Uniform Commercial Code previously cited. All records of Caravel were located in the District of Columbia. The *sole* contact with Virginia was the residence of one of Caravel's general partners. The fact that neither the partnership nor the transaction had any contact with Virginia is shown by the fact that even with the long-arm statute, Bogley was unable to effect service of process on Carol H. Smith, a general partner and resident of Maryland, who also signed the note and trust.

* * * *

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

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| BOGLEY, HARTING, MAHONEY & LEBLING, INC.,<br>A Maryland Corporation<br>7000 Wisconsin Avenue<br>Chevy Chase, Maryland,<br>*Complainant*, | |
| vs. | **IN CHANCERY NO._____** |
| THE CARAVEL OFFICE BUILDING COMPANY,<br>A District of Columbia partnership<br>SERVE: Clifford J. Hynning, General Partner<br>3700 North Military Road<br>Arlington, Virginia | |
| and | |
| CLIFFORD J. HYNNING<br>3700 North Military Road<br>Arlington, Virginia | |
| and | |
| CAROL H. SMITH<br>1034 North Calvert Street<br>Baltimore, Maryland | |

## BILL OF COMPLAINT

COMES NOW the Complainant, by counsel, and in support of this Bill of Complaint states as follows:



1. The Complainant, BOGLEY, HARTING, MAHONEY & LEBLING, INC., hereinafter referred to as BOGLEY, is a Maryland corporation engaged in the mortgage brokerage business and has been so engaged and licensed in said business in the District of Columbia, Maryland and Virginia for anumber of years.

2. The Defendant, THE CARAVEL OFFICE BUILDING COMPANY, hereinafter referred to as CARAVEL, is a District of Columbia limited partnership.

3. The Defendant, CLIFFORD J. HYNNING, is a general partner in said partnership and is a resident of Arlington County, Virginia.

4. The Defendant, CAROL H. SMITH, is a general partner in said partnership and is a resident of Baltimore, Maryland.

5. On February 28, 1969, the Defendant CARAVEL through its partners Defendants CLIFFORD J. HYNNING and CAROL H. SMITH executed a Note payable to the Complainant in the amount of ONE HUNDRED THOUSAND DOLLARS, ($100,000), to be paid on December 31, 1970. A copy of said Note is attached hereto as Exhibit "A" and made a part hereof.

6. The Defeddant CARAVEL through its partners the Defendants CLIFFORD J. HYNNING and CAROL H. SMITH, secured the above mentioned Note by a Deed of Trust dated February 28, 1969. A copy of said Deed of Trust is attached hereto as Exhibit "B" and made a part hereof.

7. The Defendant CARAVEL through its managing general partner, CLIFFORD J. HYNNING, executed an extension of said Note to payment on demand and further

waiving demand, notice or protest. A copy of said extension is attached hereto as Exhibit "C" and made a part hereof.

8. Demand has been made and defautl has been made in payment of said Note and the balance is now due as evidenced by the Statement of Account attached hereto as Exhibit "D" and made a part hereof.

WHEREFORE, the Complainant, BOGLEY, demands judgment against the Defendants jointly and severally in the principal amount of SEVENTY-NINE THOUSAND AND SEVENTY-SIX AND 48/100 DOLLARS, ($79,076.48), with interest at the rate of eight percent per annum from the 14th day of July, 1972, reasonable counsel fees as provided for in the Deed of Trust and court costs.

BOGLEY, HARTING, MAHONEY
& LEBLING, INC.

By: s/s GRIFFIN T. GARNETT
Griffin T. Garnett, III
Its Counsel

GARNETT & KOSTIK

BY: s/s GRIFFIN T. GARNETT, III
Griffin T. Garnett, III
Counsel for Complainant